

SERVED: December 16, 1993

NTSB order No. EA-4043

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 8th day of December, 1993

DAVID R. HINSON,
Administrator,
Federal Aviation Administration,

Complainant,

Docket SE-13164

v.

JAMES R. PARSLEY ,

Respondent.

ORDER DISMISSING APPEAL

The Administrator has moved to dismiss the respondent's appeal in this proceeding because it was not, as required by Section 821.48(a) of the Board's Rules of Practice, 49 C.F.R. Part 821, perfected by the timely filing of an appeal brief.¹ We will grant the motion.

¹Section 821.48(a) provides as follows:

"§ 821.48 Briefs and oral argument.

(a) Appeal briefs. Each appeal must be perfected within 50 days after an oral initial decision has been rendered, or 30 days after service of a written initial decision, by filing with the Board and serving on the other party a brief in support of the appeal. Appeals may be dismissed by the Board on its own initiative or on motion of the other party, in cases where a party who has filed a notice of appeal fails to perfect his appeal by filing a timely brief."

The record establishes that respondent on August 23, 1993, filed, by facsimile, a timely notice of appeal from the oral initial decision the law judge rendered on August 13, 1993.² However, respondent did not file an appeal brief until October 5, 1993, 1 day after the filing deadline. In response to the motion to dismiss, the respondent states that he believed that he had 50 "working" days to file his appeal brief. We find no justification for respondent's error, for the applicable rule contains no suggestion that only "working" days should be included in computing the 50 day deadline. Thus, it does not appear that the lateness of the brief is excusable for good cause shown. See, ea., Administrator v. Near, 5 NTSB 994 (1986) (Unfounded mistake as to filing requirement does not constitute good cause).

In the absence of good cause to excuse respondent's noncompliance with the time limit for filing an appeal brief, his appeal must be dismissed. See Administrator v. Hooper, NTSB Order No. EA-2781 (1988).

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to dismiss is granted, and
2. The respondent's appeal is dismissed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HAMMERSCHMIDT, and HALL, Members of the Board, concurred in the above order.

²The law judge's decision affirms an order of the Administrator suspending respondent's airline transport pilot certificate (No. 001655749) for 30 days for his alleged violations of sections 61.3(c) and 121.383(a) (2) of the Federal Aviation Regulations.

³The respondent's late appeal brief was actually mailed to the Federal Aviation Administration, which subsequently forwarded it to us.